



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2013-0408; FRL-9975-85-Region 3]

Air Plan Approval; Delaware; State Implementation Plan for Interstate Transport for the 2008 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Delaware. The Clean Air Act's (CAA) Good Neighbor Provision requires EPA and states to address the interstate transport of air pollution that affects the ability of downwind states to attain and maintain the national ambient air quality standards (NAAQS). Specifically, the Good Neighbor Provision requires each state in its SIP to prohibit emissions that will significantly contribute to nonattainment, or interfere with maintenance, of a NAAQS in a downwind state. Delaware submitted a SIP revision on March 23, 2013 that addresses the interstate transport requirements for the 2008 ozone NAAQS. On September 27, 2017, EPA published a proposed rule and a direct final rule approving Delaware's SIP in regard to the Good Neighbor Provision. However, EPA received adverse comments on its September 27, 2017 proposed rule, and subsequently withdrew the accompanying direct final rule. After considering the comments, EPA is approving Delaware's SIP revision submittal in regard to the Good Neighbor Provision for the 2008 ozone NAAQS in accordance with the requirements of the CAA.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2013-0408. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ellen Schmitt, (215) 814-5787, or by e-mail at schmitt.ellen@epa.gov.

SUPPLEMENTARY INFORMATION: On March 27, 2013, the State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its SIP to satisfy the requirements of section 110(a)(2), including 110(a)(2)(D)(i)(I), of the CAA as it relates to the 2008 ozone NAAQS. On September 27, 2017, EPA published a notice of proposed rulemaking (NPR) (82 FR 44984) and an accompanying direct final rule (DFR) (82 FR 44932) for the State of Delaware, approving the portion of the March 27, 2013 Delaware SIP revision addressing prongs 1 and 2 of the interstate transport requirements for section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. EPA received comments on the proposed rulemaking and the Agency subsequently withdrew the DFR on November 20, 2017 (82 FR 55052). This action responds to the comments received and finalizes EPA’s approval of the

portion of the March 27, 2013 Delaware SIP revision addressing section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone NAAQS.

I. Background

On March 12, 2008, EPA revised the levels of the primary and secondary ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). The CAA requires states to submit, within three years after promulgation of a new or revised NAAQS, SIP revisions meeting the applicable elements of sections 110(a)(1) and (2).¹ Several of these applicable elements are delineated within section 110(a)(2)(D)(i) of the CAA. Section 110(a)(2)(D)(i) generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution. There are four prongs within section 110(a)(2)(D)(i) of the CAA; section 110(a)(2)(D)(i)(I) contains prongs 1 and 2, while section 110(a)(2)(D)(i)(II) includes prongs 3 and 4. This action addresses the first two prongs, which are also collectively known as the Good Neighbor Provision.

Pursuant to prongs 1 and 2, a state's SIP must contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will "contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any such national primary or secondary ambient air quality standard." Under section 110(a)(2)(D)(i)(I) of the CAA, EPA gives independent significance to the matter of nonattainment (prong 1) and to that of maintenance (prong 2).

On March 27, 2013, the State of Delaware through DNREC submitted a SIP revision intended to address the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS. In this

¹ SIP revisions that are intended to meet the requirements of section 110(a) of the CAA are often referred to as infrastructure SIPs and the elements under 110(a) are referred to as infrastructure requirements.

rulemaking action, EPA is approving one portion of Delaware's March 27, 2013 submittal—the portion addressing prongs 1 and 2 of section 110(a)(2)(D)(i)(I) of the CAA. EPA previously acted on other portions of Delaware's March 27, 2013 SIP submittal for the 2008 ozone NAAQS.²

To demonstrate that its SIP adequately addresses interstate transport for the 2008 ozone NAAQS, Delaware's March 27, 2013 submittal identifies measures in its approved SIP that cover stationary, mobile, and area sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_x), both of which are precursors to ozone. Delaware's submittal identifies SIP-approved regulations that reduce VOC and NO_x emissions from a variety of stationary sources within the State, including power plants, industrial boilers, and peaking units. Delaware states in its submittal that its sources are generally controlled with best available control technology (BACT) or lowest achievable emission rate (LAER) level controls. Delaware notes that sources are generally controlled on a unit-by-unit basis at costs ranging from \$1,300 to \$11,000 per ton of NO_x reduced.³ To substantiate its control costs and feasibility claims, Delaware includes an assessment of potential additional control measures on mobile and stationary sources, including both electric generating unit (EGU) and non-EGU categories. The assessment evaluates, for each source or category, the technical and economic feasibility for additional NO_x and VOC reductions. For non-EGUs, Delaware could not identify any cost-effective controls beyond those already required by the SIP; estimating that at about \$5,000 per ton of pollutant (VOC, NO_x)

² On April 3, 2014 (79 FR 18644), EPA approved portions of Delaware's March 27, 2013 submittal for the 2008 ozone NAAQS addressing the following: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). In that action, EPA stated it would take later action on the portion of the March 27, 2013 SIP submittal addressing section 110(a)(2)(D)(i)(I) of the CAA.

³ See "Attachment A," State Submittal – Delaware Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS, www.regulations.gov, Docket number EPA-R03-OAR-2013-0408.

reduced, only a small amount of additional emission reductions would be seen.⁴ In its submittal, Delaware identifies the following Delaware regulations, which are already included in its approved SIP: 7 DE Admin. Code 1125 (New Source Review); 7 DE Admin. Code 1112 (NO_x Reasonably Available Control Technology (RACT)); 7 DE Admin. Code 1124 (VOC RACT); 7 DE Admin. Codes 1126 and 1136 (vehicle inspection and maintenance (I/M) control measures). In its submittal, Delaware concludes that it has satisfied the requirements for section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone NAAQS because its sources are already well controlled for NO_x and VOCs, and because further reductions beyond the State's current SIP measures for NO_x and VOCs are not economically feasible.

II. EPA Analysis

A. Cross-State Air Pollution Rule Update

The CAA gives EPA a backstop role, as appropriate, in the event that states fail to submit approvable SIPs. On September 8, 2016, EPA took steps to effectuate this backstop role with respect to emissions in 22 eastern states (not including Delaware) by finalizing an update to the Cross-State Air Pollution Rule (CSAPR) ozone season program that addresses the obligations of the Good Neighbor Provision for the 2008 ozone NAAQS. 81 FR 74504. The CSAPR Update established a federal trading program for affected EGUs to reduce the interstate transport of ozone pollution in the May–September ozone season in the eastern United States, and thereby help downwind states and communities meet and maintain the 2008 ozone NAAQS.⁵ The CSAPR Update uses the same framework EPA used when developing the original CSAPR,

⁴ In its March 27, 2013 submittal, Delaware stated that at about \$5,000 per ton, the State could reduce NO_x emissions by about 375 tons per year (tpy) and VOCs by 255 tpy.

⁵ Ground-level ozone is formed when VOCs and NO_x combine in the presence of sunlight. The rate of ozone production can be limited by the availability of either VOCs or NO_x. In the case of the eastern states, ozone reduction has shown to be more effective by reducing NO_x which is why reducing NO_x emissions is the focus of both the CSAPR Update and this rulemaking action regarding Delaware.

EPA's transport rule addressing the 1997 ozone NAAQS as well as the 1997 and 2006 fine particulate matter (PM_{2.5}) NAAQS. This framework establishes the following four-step process to address the requirements of the Good Neighbor Provision:

- 1) identify downwind receptors that are expected to have problems attaining or maintaining the NAAQS;
- 2) determine which upwind states contribute to these identified problems in amounts sufficient to link them to the downwind air quality problems;
- 3) identify and quantify, for states linked to downwind air quality problems, upwind emissions that significantly contribute to nonattainment or interfere with maintenance of a NAAQS; and
- 4) reduce the identified upwind emissions for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind by adopting permanent and enforceable measures through a SIP or by participating in a federal trading program.

This four-step framework is informed by cost-effectiveness and feasibility of controls, emissions, meteorology, and air quality factors. Notably, the determination as to whether a linked state significantly contributes to nonattainment or interferes with maintenance of the NAAQS in a downwind state is made at step 3 based on a multi-factor evaluation of control costs, available NO_x emission reductions, and air quality improvements (including consideration of potential over-control).⁶

B. EPA's Assessment of Delaware in the CSAPR Update

⁶ CSAPR Update final rule. 81 FR 74504, 74519 (October 26, 2016).

While EPA's CSAPR Update analysis included an assessment of Delaware, the State was not included in the final CSAPR Update federal trading program for EGUs. Nonetheless, the CSAPR Update includes technical information and related analysis that can assist EPA and states with evaluating the requirements of section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone NAAQS. In the CSAPR Update, EPA found in steps 1 and 2 of the four-step framework that Delaware is linked to a downwind maintenance receptor in Philadelphia County, Pennsylvania. 81 FR 74538. Accordingly, EPA further evaluated Delaware in step 3 of the framework to determine whether there were cost-effective NO_x emission reductions available from EGUs in the state.

In the CSAPR Update, EPA examined emission reductions available at various levels of control stringency, represented by cost-thresholds of \$0 per ton; \$800 per ton; \$1,400 per ton; \$3,400 per ton; \$5,000 per ton; and \$6,400 per ton. This analysis accounted for existing limits on Delaware EGUs in the State's March 27, 2013 SIP submittal. Notably, for Delaware, EPA's assessment of EGUs' NO_x reduction potential showed no cost-effective reductions available in Delaware within the allotted short term implementation timeframe (by 2017 for the 2008 ozone NAAQS) at every cost threshold EPA evaluated because the Delaware EGUs are already equivalently controlled. 81 FR at 74553. In addition, Delaware's March 27, 2013 submittal evaluated sources other than EGUs and the State could not identify any cost-efficient controls for reducing VOCs or NO_x beyond those already required by the SIP.

C. Air Quality Assessment Tool

The emission reductions at the various levels of control stringency analyzed by EPA could result in air quality improvements such that individual receptors drop below the level of the 2008

ozone NAAQS based on the cumulative air quality improvement from the states analyzed. Therefore, in finalizing the CSAPR Update, EPA explicitly evaluated whether the potential emission budgets evaluated for each state would result in over-control of upwind state emissions,⁷ as required by precedents of the Supreme Court and D.C. Circuit.⁸ Specifically, EPA evaluated whether at each level of NO_x emission budget, the identified downwind ozone problems (*i.e.*, nonattainment or maintenance problems) are resolved.

In examining emissions contribution to nonattainment and maintenance receptors for the 2008 ozone NAAQS, EPA used the Air Quality Assessment Tool (AQAT) to estimate the air quality impacts of the upwind state EGU NO_x emission budgets on downwind ozone pollution levels for each of the assessed EGU NO_x emission budget levels. EPA assessed the magnitude of air quality improvement at each receptor at each level of control, examined whether receptors are considered to be resolved,⁹ and looked at the individual contributions of emissions from each state to each of that state's linked receptors. EPA also examined each state's air quality contributions at each potential level of control stringency, assessing whether a state maintained at least one linkage to a receptor that was estimated to continue to have nonattainment or maintenance problems with the 2008 ozone NAAQS.

As stated in section VI.D. in the preamble of the final CSAPR Update and in the Ozone Transport Policy Analysis Technical Support Document (TSD) used to support the final CSAPR Update, EPA's AQAT assessment indicates that an emissions budget reflecting \$800 per ton of NO_x reduced would resolve the maintenance problem at the Philadelphia, Pennsylvania

⁷ In this rulemaking action, the term "over-control" describes the possibility that a state might be compelled to reduce emissions beyond the point at which every affected downwind state is projected to attain and maintain the NAAQS. See *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 2014; *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 127 (D.C. Cir. July 28, 2015).

⁸ *Id.*

⁹ When the average and maximum design values of a receptor decrease to values below 76 parts per billion (ppb) or (0.076 ppm), the nonattainment and maintenance issues of the receptor would be considered resolved.

maintenance receptor (monitor ID 4210100124) to which Delaware was linked. Thus, EPA estimated that implementation of the CSAPR Update, along with NO_x controls in Delaware's SIP submittal, are anticipated to resolve the lone downwind receptor to which Delaware is linked.

D. Conclusion

In conclusion, when evaluating all the available information, EPA finds that Delaware has implemented measures that have reduced statewide VOC and NO_x emissions and that should continue to reduce emissions within the State. The maintenance receptor that Delaware is linked to in the CSAPR Update is projected by EPA to have its maintenance issue resolved with CSAPR Update implementation¹⁰ and existing NO_x controls in place in Delaware. EPA further finds Delaware has no cost-effective EGU NO_x emissions reduction potential by 2017, beyond what is already required in Delaware's SIP, at or below the maximum \$6,400 per ton cost-threshold evaluated in the CSAPR Update. Additionally, EPA finds that Delaware's non-EGU sources are also well-controlled and that there is limited VOC and NO_x emissions reduction potential, beyond what it already required in the State's SIP, at and below a \$5,000 per ton cost-threshold. Thus, EPA finds Delaware has fully satisfied its obligation with respect to the requirements of section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone NAAQS, and EPA is approving the portion of the March 27, 2013 Delaware SIP submittal addressing prongs 1 and 2 of the interstate transport requirements for the 2008 ozone NAAQS.

III. Summary of Public Comments and EPA Responses

¹⁰ EPA notes that the preliminary 2014-2016 design value for the identified CSAPR Update Philadelphia maintenance site does not reflect the air quality improvements anticipated as a result of the CSAPR Update implementation because sources began compliance with the rule in May 1, 2017.

During the comment period, EPA received several anonymous comments on the rulemaking. EPA provides responses to two of these comments, below. All other comments received were not specific to this action and thus are not addressed here.

Comment #1: The first commenter stated that EPA cannot rely on federal implementation plans (FIPs) to reduce the downwind contribution of air pollution to another state and pointed out that section 110(a)(2)(D) of the CAA requires that measures addressing interstate transport must be approved into the State's SIP. The commenter believes that EPA stated in its DFRN¹¹ that Delaware has been shown to significantly contribute to the Philadelphia receptor, and subsequently the commenter states that EPA cannot approve Delaware's plan because the necessary measures to reduce interstate transport of air pollutants to other states cannot be met without a FIP. Further, the commenter states that "the fact that Delaware is included in the Federal plan means that EPA has already determined that the state's own plan does not meet the requirement of 110." The commenter asks EPA to reconsider and disapprove Delaware's plan until "such time as Delaware is able to implement its own plan and that plan is approved into the SIP."

Response: As an initial matter, EPA disagrees that FIPs are an inappropriate tool to address the requirements of section 110(a)(2)(D)(i)(I). Pursuant to section 110(c), whenever EPA finds that a state has failed to make a required submission or disapproves a state's submission, the Agency has an obligation to promulgate a FIP to address the deficiencies in a state's plan, including the requirements of section 110(a)(2)(D)(i)(I). Since 2005, EPA has relied on federal trading programs, such as the Clean Air Interstate Rule (CAIR), its replacement CSAPR, and the CSAPR Update in order to reduce the downwind contributions of air pollution to another state

¹¹ September 27, 2017 (82 FR 44932).

via the promulgation of FIPs. In 2014, the United States Supreme Court upheld CSAPR in *EPA v. EME Homer City Generation, L.P.*, finding that EPA had the authority to promulgate a FIP upon a determination that a state had failed to make an adequate submission. 134 S. Ct. 1584, 1601 (2014). Thus, EPA disagrees with the commenter's premise that EPA cannot rely on federal plans to reduce the downwind contribution of air pollution to another state in addressing section 110(a)(2)(D) of the CAA.

Nonetheless, whether or not EPA may rely on a FIP to address the requirements of the Good Neighbor Provision is irrelevant to EPA's action on Delaware's SIP because its approval is not contingent on a FIP. EPA did not promulgate a FIP for Delaware in the CSAPR Update (the federal plan to which the commenter presumably refers). Accordingly, contrary to the commenter's assertion, EPA did not already determine in that rulemaking that the State's submittal does not meet the requirements of section 110(a)(2)(D)(i)(I) of the CAA. Rather, EPA explicitly stated that it would further evaluate the state's compliance with the Good Neighbor Provision when it evaluated the State's SIP in a separate action. *See* 81 FR at 74553.

EPA also disagrees with the commenter's assertion that EPA stated in its September 27, 2017 DFR that Delaware was shown to "significantly contribute" to the Philadelphia, Pennsylvania receptor. In fact, as EPA stated in its DFR and again in this final notice, the Agency used a four-step framework to evaluate each state in order to determine whether the state will significantly contribute to nonattainment or interfere with maintenance of downwind air quality. While EPA's analysis did determine that the Philadelphia monitor/receptor was expected to have problems attaining or maintaining the 2008 ozone NAAQS (step 1 of four-step framework) and that Delaware was linked to the downwind air of the Philadelphia receptor (step 2 of the

framework), this is not equivalent to a determination that Delaware will significantly contribute to nonattainment or interfere with maintenance. Rather, this determination is made at step 3 of the framework and depends on whether EGUs in the linked state have available cost-effective NO_x emission reductions.¹² As noted above, EPA determined that Delaware's sources were already being controlled at levels equivalent to the cost-threshold applied to linked states in the CSAPR Update, and therefore had no cost-effective emission reductions available from EGUs in the State. Thus, EPA did not conclude that Delaware significantly contributes to nonattainment or interferes with maintenance in the CSAPR Update and did not involve the State in a FIP.

Therefore, EPA disagrees with the commenter that Delaware relies on any FIP to meet section 110(a)(2)(D) of the CAA for the 2008 ozone NAAQS, and the Agency thus disagrees that it should disapprove Delaware's plan until "such time as Delaware is able to implement its own plan and that plan is approved into the SIP." EPA has discussed in section II of this notice why EPA agrees with Delaware's determination in its March 27, 2013 SIP revision submittal that the SIP contains the necessary measures to address prongs 1 and 2 of the interstate transport requirements for section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

Comment: The second commenter stated that EPA did not address a March 28, 2017 Executive Order regarding the promotion of energy independence and economic growth. The Executive Order required federal agencies to review all regulations to ensure they do not impose unnecessary burdens on the economy.

¹² The Supreme Court held that it was a permissible interpretation of the statute to apportion responsibility for states linked to nonattainment receptors considering "both the magnitude of upwind States' contributions and the cost associated with eliminating them." *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. at 1606.

Response: The March 28, 2017 Executive Order (EO)¹³ pertains to reviewing existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency action) that potentially burden the development or use of domestically produced energy resources, with attention to oil, natural gas, coal, and nuclear energy. EPA does not believe that EPA's regulatory action to approve Delaware's SIP submittal is inconsistent with this EO. Specifically, EPA is approving Delaware's submission on the grounds that the controls that it already imposes address interstate transport of emissions, such that its sources do not significantly contribute to nonattainment or interfere with maintenance in another state. In any event, if a SIP submittal from a state meets all the requirements of section 110(a)(2) of the CAA, including the required emission limitations, then section 110(k)(3) of the CAA requires that EPA shall approve the SIP submission. As explained in section II of this action, the Agency finds that the Delaware SIP meets the requirements of section 110(a)(2)(D)(i)(I) of the CAA with respect to the 2008 ozone NAAQS. Thus, under the plain language of section 110(k)(3), EPA must approve the SIP submission, and cannot disapprove it based on the March 28, 2017 EO.

IV. Final Action

EPA is approving the portion of the March 27, 2013 Delaware SIP revision addressing prongs 1 and 2 of the interstate transport requirements for section 110(a)(2)(D)(i)(I) of the CAA for the 2008 ozone NAAQS for the reasons discussed in this rulemaking.

On April 3, 2014 (79 FR 18644), EPA finalized approval of the following infrastructure elements or portions thereof from the March 27, 2013 submittal: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). This action approves the remaining

¹³ Based on the comment, EPA assumes the EO in question is EO 13738, Promoting Energy Independence and Economic Growth, signed March 28, 2017.

portions of the March 27, 2013 SIP revision, which address prongs 1 and 2 of section 110(a)(2)(D)(i)(I) of the CAA, also known as the Good Neighbor Provision. EPA did not take action upon these elements in the Agency's prior SIP approval action, published on April 3, 2014 (79 FR 18644).

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, addressing Delaware's interstate transport for the 2008 ozone NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: March 13, 2018.

Cecil Rodrigues,
Acting Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart I-- Delaware

2. In § 52.420, the table in paragraph (e) is amended by adding an entry for “Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS” after the entry for “Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS” (with an EPA approval date of 4/3/2014) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
* * * * *				
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS	Statewide	3/27/13	[Insert date of Federal Register publication] [Insert Federal Register citation]	This action addresses CAA element 110(a)(2)(D)(i)(I).
* * * * *				

[FR Doc. 2018-05868 Filed: 3/22/2018 8:45 am; Publication Date: 3/23/2018]